

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**05 Civ. 5231 (RJS)**

**ECF CASE**

**AMERINDO INVESTMENT ADVISORS INC.,  
AMERINDO INVESTMENT ADVISORS, INC.,  
AMERINDO ADVISORS UK LIMITED,  
AMERINDO MANAGEMENT INC.,  
AMERINDO TECHNOLOGY GROWTH FUND, INC.,  
AMERINDO TECHNOLOGY GROWTH FUND II, INC.,  
TECHNO RAQUIA, S.A.,  
ALBERTO W. VILAR, and  
GARY ALAN TANAKA,**

**Defendants.**

**RECEIVER'S APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE  
RETENTION OF CBIZ ACCOUNTING, TAX & ADVISORY OF NEW YORK, LLC  
AND CBIZ ACCOUNTING, TAX & ADVISORY OF SAN DIEGO, LLC**

**TO: THE HONORABLE RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE:**

Ian J. Gazes, the Court appointed receiver (the "Receiver") in the above-captioned case submits this application (the "Application") for an order, substantially in the form attached as Exhibit "A", authorizing and empowering the Receiver to retain CBIZ Accounting Tax and Advisory of New York, LLC ("CBIZ NY") and CBIZ Accounting Tax and Advisory of San Diego, LLC ("CBIZ SD." and with CBIZ NY, "CBIZ"), as financial advisor to the Receiver effective July 11, 2013, and respectfully states as follows:

## **I. SUMMARY OF RELIEF REQUESTED**

1. Pursuant to the Order dated July 29, 2013 [ECF Doc No. 297] the Receiver is authorized to seek retention of professionals subject to entry of a further order of this Court. By this Application Applicant is seeking an order authorizing and empowering the Receiver to retain CBIZ effective as of July 11, 2013 to act as the Receiver's financial advisor and provide consulting services in connection with the tax implications, claims process and further issues related to the claims and distribution process.<sup>1</sup>

## **II. RELEVANT BACKGROUND**

2. On October 17, 2012, the Court entered an order appointing (the "Appointment Order") the Receiver and empowered him "to investigate and determine the value of investor assets that have been seized or frozen pursuant to the forfeiture order in the [related] criminal case, to consider what actions can and should be taken to avoid dissipation of those assets, and to submit a report to the Court regarding his findings and recommendations. Upon receiving his report, the Court will determine whether Mr. Gazes should be empowered to take broader action, such as managing the assets and beginning a claims process for investors."

3. On March 14, 2013, the Court entered an order in the related criminal case, *United States of America v. Alberto William Vilar and Gary Tanaka*, S3 05 Cr. 621 (RJS), modifying its previously entered Post-Conviction Restraining Order (the "Restraining Order") to authorize the withdrawal of \$50,000.00 from a restrained account to provide for the Receiver's compensation.

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<sup>1</sup> July 11, 2013 was the date that CBIZ commenced rendering services for the Receiver.

4. On May 30, 2013, the Receiver filed his Initial Report and Recommendations (“R&R”).

5. On June 20, 2013, the Court entered two orders (together, the “Claims and Distribution Orders”) adopting the R&R and directing the Receiver to “begin the process of establishing a distribution fund and a claims and interim distribution procedure” as set forth in the R&R. Thereafter, on July 30, 2013, the Court entered an Order dated July 29, 2013, modifying the Claims and Distribution Orders to allow, among other things, the Receiver to retain professionals subject to entry of a further order of the Court [ECF Doc. No. 297].

6. Since the entry of the Claims and Distribution Orders, the Receiver has begun to establish the distribution funds, has given notice to potential claimants, and has received approximately thirty (30) proofs of claim. With respect to each of these matters, the Receiver has required the assistance of CBIZ.

## **II. RELIEF SOUGHT**

7. The Receiver seeks a court order, substantially in the form attached as Exhibit A, authorizing the Receiver to retain CBIZ as his financial advisor.

### **Scope of Services to be Provided**

8. The terms of CBIZ’s retention by the Receiver are set forth in the engagement letter (the “Engagement Letter”) annexed hereto as Exhibit “B”. The terms provide that CBIZ shall:

- a. Assist the Receiver with any investigation into value and liquidation of the forfeited assets, including the necessary steps to be taken to preserve the value of the forfeited assets.
- b. Analyze the extent and nature of potential claims against the forfeited assets.

- c. Assist the Receiver in establishing a distribution fund consisting of the liquidation proceeds held in investor accounts for the purpose of making interim and final distributions to allowed claim holders.
- d. Assist the Receiver in establishing and maintaining procedures for the claims and distribution process.
- e. Analyze transactions with investors, insiders, related and/or affiliated companies, subsequent and prior to the date of the filing of the petition, as instructed by the Receiver.
- f. Assist the Receiver in any litigation proceedings against the financing institutions of the Defendants, insiders and other potential adversaries.
- g. Attend meetings with or on behalf of the Receiver. Prepare presentations to the Receiver that provides analyses and updates on diligence performed.
- h. Analyze potential tax liabilities in connection with the liquidation, claims and distribution process.
- i. Perform any other services that may be necessary in our role as accountants/financial advisors to the Receiver or that may be requested by Receiver.

#### Compensation

9. The Engagement Letter, which has been approved by the SEC, provides:

CBIZ is willing to receive compensation on an hourly basis, subject to the approval of this Court and in compliance with “SEC’s receiver billing guidelines” and any such other procedures as may be fixed by order of this Court for professional services rendered by CBIZ. Currently, the applicable hourly rates for employees of Consultant range from: Managing Directors and Directors \$395.00 to \$595.00; Senior Managers and Managers \$310.00 to \$410.00; and Senior Associates and Associates \$170.00 to \$310.00. These rates are subject to change over the course of this engagement. CBIZ has agreed to a voluntary reduction of 30% on all fees associated with the work performed under this agreement.

#### Disclosures

10. Finally, in the Engagement Letter, CBIZ discloses any and all connections with any parties in interest. The Receiver submits that CBIZ had no connections with any of the parties in interest that might disqualify CBIZ from being retained by the Receiver. The Receiver has reviewed the Engagement Letter and the disclosures contained therein and verily believes that neither (a) the Receiver's retention of CBIZ pursuant to Orders of the United States Bankruptcy Court for the Southern District of New York in various chapter 11 and 7 cases, nor (b) the relationship CBIZ has with Kassimir and/or MKA (defined in the Engagement Letter), disqualifies CBIZ from representing the Receiver in these matters.

**WHEREFORE**, the Receiver respectfully prays for entry of an order of this Court authorizing the Receiver to retain CBIZ effective July 11, 2013 according to the terms and conditions set forth in the Engagement Letter, and such other and different relief as to this court may seem just and proper.

Dated: New York, New York  
September 27, 2013

/s/ Ian J. Gazes  
Ian J. Gazes, Receiver  
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New York, New York 10013  
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